**IN THE HIGH COURT OF KERALA AT ERNAKULAM**

**PRESENT :**

**THE HONOURABLE MR. JUSTICE K.M.JOSEPH**

**THURSDAY, THE 22ND FEBRUARY 2007 / 3RD PHALGUNA 1928**

**WP(C).No. 3625 of 2007(F)**

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**PETITIONERS:**

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1. **DR.DIMPI.V.DIVAKARAN, S/O.V.V.DIVAKARAN, VAILAPPULLY HOUSE, VALAPPAD, THRISSUR DISTRICT.**

2. **DR.PRAMOD C.R. S/O.T.C.R.NAMBOOTHIRI, RAMANILAYAM, 49/2067, SRAMBIKKAL PARAMBU, EDAPPALLY P.O. KOCHI ERNAKULAM DISTRICT.**

**BY ADV. SRI.KALEESWARAM RAJ**

**RESPONDENTS:**

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1. **MAHATMA GANDHI UNIVERSITY, KOTTAYAM, REPRESENTED BY THE REGISTRAR, MAHATMA GANDHI UNIVERSITY, KOTTAYAM.**

2. **DR.R.SURESH, DEVI NIVAS, NEDUNGOLAM P.O. KOLLAM DISTRICT.**

**BY ADV. SRI.O.V.RADHAKRISHNAN (SR.)**
**SMT.K.RADHAMANI AMMA**
**SRI.ANTONY MUKKATH**
**SRI.K.V.JOY**
**SRI.K.RAMACHANDRAN (THYKOODAM)**
**SRI.V.A.MUHAMMED, SC, M.G.UNIVERSITY**

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 12/02/2007, THE COURT ON 22.02.2007 THE SAME DAY DELIVERED THE FOLLOWING:**

**W.P.C NO.3625/2007**

**APPENDIX**

**PETITIONER'S EXHIBITS**

**EXT.P1:- COPY OF THE ORDER DT.6.1.2007.**

**EXT.P2:- COPY OF THE DRAFT APPOINTMENT INTENDED TO BE ISSUED TO THE 2ND RESPONDENT.**

**EXT.P3:- COPY OF THE NOTIFICATION DT.24.12.05.**

**EXT.P4:- COPY OF THE ORDER DT.27.2.89.**

**EXT.P5:- COPY OF THE CHAPTER III CLAUSE 3 OF THE MAHATMA GANDHI UNIVERSITY STATUTES 1997.**

**EXT.P6:- COPY OF THE NEWS REPORTS THAT APPEARED IN NEWSPAPERS DT.6.2.07**

**EXT.P7:- COPY OF THE RELEVANT PAGE IN THE PETITIONER'S S.S.L.C. BOOK.**

**RESPONDENTS EXHIBITS**

**EXT.R2(a):- COPY OF THE LETTER NO.AD.AII (E) 3175/06/ADMN DT.30.1.07 OF THE 1ST RESPONDENT.**

**EXT.R2(b):- COPY OF THE RELIEVING ORDER NO.G1/2(A)/2282/06-07 DT.31.01.07 OF THE SREE NARAYA COLLEGE , CHERTHALA.**

**EXT.R2(c):- COPY OF THE LETTER DT.1.2.07 OF THE PETITIONER TO THE 1ST RESPONDENT.**

**EXT.R2(d):- COPY OF THE ORDER NO.AD A11 (3)/3175/06/ADMN DT.1.2.07 OF THE 1ST RESPONDENT.**

**EXT.R2(e):- COPY OF THE CERTIFICATE OF TRANSFER OF CHARGE DT.1.2.07.**

**/TRUE COPY/**

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**K. M. JOSEPH, J.**

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**W.P.C. NO. 3625 OF 2007 F**

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**Dated this the 22nd February, 2007**

**JUDGMENT**

Case of petitioners, in brief, is as follows:

They are Post Graduates in Politics and International Relations. First petitioner is holder of M.Phil. Degree in International Politics from the School of International Studies, Jawaharlal Nehru University (hereinafter referred to as JNU). Second petitioner's M.Phil. Is in Chinese Studies from JNU. They are qualified to be appointed as Lecturers in International Relations in the Universities in Kerala. They are holders of Ph.D. from JNU. A vacancy of Lecturer in the School of International Relations and Politics arose in the first respondent University, when one Dr. K.N. Harilal, Lecturer got relieved from the University to join the Centre for Development Studies, Thiruvananthapuram. The University is duty bound to appoint Lecturers by following the procedure under Clause 3 Chapter III of the MG University Statutes. It reads as follows:

> ***"Appointment of teachers:***
>
> *Teachers of the University shall be appointed by the Syndicate after advertisement inviting application as hereinafter provided. In making appointments by direct recruitment to posts in any class or category in each department under the University, the University shall, mutatis mutandis observe the provisions of clauses (a), (b) and (c) of Rule 14 and Rules 15, 16, 17 and 17A of the Kerala State and Subordinate Services Rules, 1958, as amended from time to time. For the purpose of observing these rules all the teaching departments under the University shall be treated as a single unit. It shall however be competent for the syndicate to appoint in exceptional cases Professors and Readers without advertisement, if it is satisfied that persons already in the service of the University are suitable for the post."*

It is stated that the appointment without an advertisement is only permitted in the case of Professors and Readers and that too in

exceptional circumstances. Ext.P2 is a draft appointment intended to be issued to second respondent appointing him as Lecturer in the School of International Relations and Politics. Case of petitioners is that the second respondent is selected without due selection process. Candidates like the petitioners who are suitable and eligible to apply for the post are denied opportunity. Ext.P3 is a Notification dated 24.12.2005. It shows that there are two vacancies of Lecturer in the School of International Relations. One of the vacancies was reserved for Ezhava Community. Dr.R. Girishkumar and Dr.C. Vinodan were appointed. The said Lecturers are continuing. It is further stated that the petitioners have the desirable qualifications mentioned in Ext.P4 which was a Notification on the basis of which Dr. Harilal mentioned in Ext.P1 was selected.

2. The stand taken by the University in the Counter Affidavit, inter alia, is as follows:

Ten candidates found eligible by the Screening Committee were interviewed by the Selection Committee pursuant to Ext.P3

for the post of Lecturer reserved for Ezhava Community in which the first petitioner also appeared. Sixteen candidates found eligible by the Screening Committee were interviewed by the Selection Committee for the post of Lecturer for open community in which the second petitioner also appeared. Rank list was published on 22.5.2006. Validity was fixed as one year with effect from the date of publication. Petitioners did not emerge successful in the select list which is not challenged by them. Dr. Harilal was relieved of his duties retrospectively with effect from 22.10.2001 AN. The actual date of occurrence of the vacancy was 23.10.2001. In order to improve and maintain the standard of Higher Education, the UGC as well as the Department of Human Resource Development, Government of India/State Government have urged all Universities to appoint permanent teachers in all vacancies as early as possible. It is also directed that engagement of Guest/Contract faculty should be dispensed with at the earliest. Upon the relief of Dr.K.N. Harilal, the Director of School of International Relations and

Politics requested the Vice Chancellor to extend the tenure of Guest Lecturer appointed in the vacancy of Dr. K. N. Harilal. In the light of the UGC/State Government directions, the Vice Chancellor ordered to examine whether a permanent Lecturer can be appointed from the existing rank list. After getting legal opinion, it was decided to fill the vacancy occurred treating it as first in the coming vacancies after 8.3.2006 from the existing rank list, and a turn of vacancy as per communal rotation went to Ezhava community and the second respondent who is ranked second in the Select list was accordingly appointed. Paragraph 7 of the Counter Affidavit is extracted hereunder:

> *"7. It is submitted that there were precedents in appointing candidates beyond the number of posts advertised which had fallen vacant after the publications of the rank list. One post was notified for Lecturer in the School of Indian Legal Thought as in the case of School of International Relations and Politics, but two candidates were appointed. Smt. Jasmine Alex, Lecturer, School of Indian Legal Thought who ranked first in the select list was appointed on*

> *23.05.2006 and when a subsequent post was fallen vacant, Smt. Vani Kesari A. who ranked second was appointed from the same select list on 11.10.2006. Similarly from the select list published on 22.05.2006 for Lecturer (Malayalam) in the School of Letters, Sri. Jose K. Manuel who ranked first was appointed on 23.05.2006 and when a subsequent vacancy arose Dr.A.M. Unnikrishnan who ranked second was appointed on 11.10.2006."*

Thereafter, reference is made to various procedures for filling up a vacancy. It is stated that it will take at least six months.

3. Second respondent has filed a Counter Affidavit and an Additional Counter Affidavit. A Reply Affidavit is also filed.

4. Learned counsel for the petitioners would rely on the decision of this Court in Kerala Agricultural University v. Gopinathan Unnithan (1996 (1) KLT 344) and the decision of the Apex Court in Ashok Kumar and Others v. Chairman, Banking Service Recruitment Board and Others (AIR 1996 SC 976). He would submit that Statute 3 (referred to hereinbefore)

is peremptory in its command and in view of the number of posts in Ext.P3 being limited to two in regard to the post of Lecturer in International Relations, without a further selection, an appointment is impermissible in regard to the vacancy which arose consequent on Ext.P1 order. He would submit that permitting the appointment of the second respondent to pass muster would undermine the principle of equality enshrined in Articles 14 and 16 of the Constitution of India.

5. Learned counsel for the respondent University reiterates its stand as indicated in the Counter Affidavit which I have already referred to. It is pointed out that a decision was taken by the Syndicate to the effect that the list will remain in force for a period of one year. He emphasised that the Court is dealing with a teaching post. Petitioners having failed in the selection process pursuant to Ext.P3, should not be permitted to overturn the appointment of second respondent, he submits. He relied on paragraph 25 of the decision in Prem Singh and Others v. Haryana State Electricity Board and Others (1996 (4) SCC 319).

He would submit that this is followed by the Apex Court in its decision in State of J & K and Others v. Sanjeev Kumar and Others ((2005) 4 SCC 148). In the decision in Prem Singh and Others v. Haryana State Electricity Board and Others (1996 (4) SCC 319), the Apex Court held as follows:

> *"25. From the above discussion of the case-law, it becomes clear that the selection process by way of requisition and advertisement can be started for clear vacancies and also for anticipated vacancies, but not for future vacancies. If the requisition and advertisement are for a certain number of posts only, the State cannot make more appointments than the number of posts advertised, even though it might have prepared a select list of more candidates. The State can deviate from the advertisement and make appointments on posts falling vacant thereafter in exceptional circumstances only or in an emergent situation and that too by taking a policy decision in that behalf. Even when filling up of more posts than advertised is challenged,*

> *the court may not, while exercising its extraordinary jurisdiction, invalidate the excess appointments and may mould the relief in such a manner as to strike a just balance between the interest of the State and the interest of persons seeking public employment. What relief should be granted in such cases would depend upon the facts and circumstances of each case."*

Relying on the same, learned counsel would contend that this is a case where this Court may not interfere with the appointment of the second respondent even finding that the appointment made is in excess of the post notified.

6. Shri O.V. Radhakrishnan, learned senior counsel appearing on behalf of second respondent adopted the contentions of Shri V.A. Muhammed, learned standing counsel for the University. He would further submit that the words of Statute 3 only required that a person shall be appointed pursuant to an advertisement and selection. Second respondent was indeed selected and included in the list pursuant to a

Notification as contemplated in the Statute. The law giver has not intended that each time a vacancy arises, irrespective of how it arises, the vacancy should be filled up preceded by an advertisement and selection following it, he submits. He would point out that second respondent who was working as a Lecturer Selection Grade in the Department of Political Science in a College at Cherthala, was issued Ext.R2(a) letter dated 30.1.2007 and he joined duty. He would also reiterate that the select list as such is not challenged. The fixation of the period by the Syndicate is also not challenged by petitioners. The practice in the University also indicates a policy, he points out. He would rely on the decision in Virender S. Hooda And Others v. State of Haryana and Another ((1999) 3 SCC 696). He would contend that on a perusal of the decisions of the Apex Court, it is clear that while future vacancies could not be filled up from a select list, both notified vacancies and anticipated vacancies could very well be filled up by effecting appointments from the list prepared. He would join hands with the learned counsel for

the University to contend that the appointment of Guest Lecturers may not accord with the best academic interest of the students. He would further contend that a perusal of Ext.P1 would show that the vacancy existed. At any rate, it could very well be anticipated, as Dr. Harilal was on long leave and the lien which he had in the University would stand terminated after a reasonable period of time as fixed, he submits. Therefore, after that period, it could not be disputed that the vacancy was only imminent. Therefore, it could be treated as an anticipated vacancy, he contends. He would submit that the principles of communal rotation were also borne in mind as the second respondent belongs to Ezhava Community and it is to the said Community that the vacancy arising consequent on Ext.P1 appointment should be given. It is contended that the University is competent to fix the validity of the period of select list, and that filling up more posts than advertised is not inherently invalid.

7. The respondent University issued Ext.P3 Notification,

inter alia, calling for applications on 27.12.2005 inviting applications, inter alia, for filling up two posts of Lecturer in International Relations. While one was open, the other was reserved for Ezhava Community. Two rank lists were accordingly prepared. From the same, Dr. Vinodan and Dr. Girishkumar were appointed. Thus, the two posts to fill up which Ext.P3 was, inter alia, issued stood apparently filled. It is not in dispute that the aforesaid two appointees are still continuing in service. A further vacancy of Lecturer in School of International Relations arose as evident from Ext.P1 dated 6.1.2007. Dr. K.N. Harilal was sanctioned leave without allowance for three years with effect from 22.10.2001 as per University Order dated 20.10.2001. The leave was further extended for a period of seven years with effect from 22.10.2004 to continue the appointment in the Centre for Development Studies as per University Order dated 20.3.2006. Thereafter, Dr. K. N. Harilal made requests vide letters dated 18.8.2006 and 3.10.2006 on the basis that the Centre for

Development Studies has decided to confirm his service in the post of Associate Fellow. Accordingly, it was requested that he may be relieved with effect from the date on which he was originally sanctioned leave without allowance, i.e. 22.10.2001. This request was apparently supported by letter of confirmation from the Centre of Development Studies indicating that he was confirmed with effect from 22.10.2002 subject to the condition that he got formal relieving orders from the University. It was in such circumstances sanction was accorded by the Vice Chancellor to Dr. K. N. Harilal to relieve him of his duties with effect from 22.10.2001 AN to take up appointment in the Centre for Development Studies, terminating his lien in the University service.

8. It is this vacancy which has been filled up by appointing the second respondent. Admittedly, there is no Notification subsequent to Ext.P3 in compliance with Statute 3 already referred to. The appointment is premised on the vacancy being found liable to be filled up by an Ezhava candidate and

the inclusion of the second respondent in the select list prepared by the Committee pursuant to Ext.P3. Undoubtedly, as already noticed, the two posts to fill up which Ext.P3 was purportedly issued stood filled up by candidates in the select list and they are continuing as of now. It is necessary to consider whether it could be said that the vacancy which arose consequent upon Ext.P1 could be said to be anticipated. Learned standing counsel for the University does not have such a case. No doubt, it is the case of the University that the vacancy must be treated as one existing from 22.10.2001. I am of the view that it cannot be said that the vacancy which arose consequent on Ext.P1 could be treated as an anticipated vacancy. An anticipated vacancy is one which one can reasonably foresee. A retirement vacancy would be an apt example of an anticipated vacancy. Dr. K. N. Harilal was granted leave from 22.10.2001 for three years. In fact, at the time of Ext.P3, the order dated 20.3.2006 referred to as second paper in Ext.P1, was not passed. Thus, at the time of Ext.P3, the University would have expected Dr. K.

N. Harilal to rejoin. The University in fact does not have a case that the vacancy could be treated as an anticipated vacancy. There is no case for the University to the effect that the vacancy could be treated as an anticipated vacancy on the basis that the lien of Dr. K.N. Harilal would stand automatically terminated after the passage of certain period of time. It is to be noted that the list was published on 22.5.2006. The decision by the Syndicate to keep the select list alive for a period of one year was taken after the University Order dated 20.3.2006. As per the said University Order, in fact, the leave without allowance stood extended for a period of seven years with effect from 22.10.2004. This means that leave without allowance was granted till 21.10.2011. In fact, but for the request made by Dr. K. N. Harilal which is acceded to, there would not have been any vacancy. Dr. K.N. Harilal made the request to be relieved only on 18.8.2006 and 3.10.2006. These dates are clearly far removed from 24.12.2005 on which date Ext.P3 was issued. Even on 22.5.2006 when the list was published, it could not

have been contemplated that a vacancy would arise, as by the second paper in Ext.P1 dated 20.3.2006, leave was granted till 2011. Thus, it is very clear that the contention of Shri O.V. Radhakrishnan, learned senior counsel appearing for the second respondent, that the vacancy could be treated as an anticipated vacancy, is only to be repelled.

9. Now, I will examine the case law cited by the parties. In Kerala Agricultural University v. Gopinathan Unnithan (1996 (1) KLT 344), a Division Bench of this Court had occasion to consider the question as to whether recruitment could be made in excess of notified vacancies. It related to the Kerala Agricultural University. There, the Division Bench has held as follows:

> *"When one vacancy alone was notified, candidates ranked in the select list cannot be appointed to the vacancies that arose subsequently. Recruitment of candidates in excess of the notified vacancy is a denial and deprivation of the constitutional rights of other qualified hands under Art. 14 read with Art.16*

> *(1) of the Constitution of India. Therefore, a person included in the select list cannot be appointed to the subsequent vacancies which were not covered by the Notification. Any appointment to the vacancies that had arisen subsequently and which were not notified for recruitment is unconstitutional. There was only one vacancy. It was for filling up that vacancy only a select list was prepared. From that select list, a candidate can be appointed only for filling up the single vacancy notified. Appointment of candidates in the waiting list to the vacancies subsequently arose is unconstitutional."*

In Rajamohan v. The State of Kerala and others ((1997) 1 ILR 199), a vacancy arose for the post of Director of Extensions under Section 36(1) of the Kerala Agricultural University Act. The number of post notified was one. A select was prepared containing three names. The writ petition was filed seeking a direction to fill up the vacancy by appointing the petitioners who were ranked at Sl. Nos. 2 and 3. The person who was appointed, was to retire shortly. The Court held as follows:

*"Only one vacancy was notified because at a time more than one vacancy will not arise, because there is only one post. No other vacancy could be expected when the University was attempting to fill the then existing vacancy. No further vacancy than the one notified was anticipated or envisaged or expected. Therefore, the notification was intended only for one vacancy which was for the post of Director of Extensions. It is true that the notification providing for procedure of appointment mentioned that the list shall be valid for one year.*

*When one vacancy is notified and a period of one year is prescribed it does not mean that the list can be utilised for filling up of a second vacancy. That will offend Articles 14 and 16(1) of the Constitution of India. If the vacancy is to be filled up from the list prepared pursuant to the earlier notification, that amounts to denial of opportunity to several candidates qualified after the notification and those who did not offer*

> *themselves earlier as only one vacancy has been notified. In such circumstances, to operate the existing list will be violative of Articles 14 and 16 of the Constitution of India."*

In fact, this Court in Jyothish Kumar v. State of Kerala (1996 (2) KLT 444), was dealing with a case of a Notification issued by the PSC inviting applications in the Health Department. The Rules of Procedure provided that all vacancies notified and existing and arising during the currency of the list are to be made use of for appointment by candidates included in the list. Thereafter, the Court distinguished the decision of this Court in Kerala Agricultural University v. Gopinathan Unnithan (1996 (1) KLT 344) and Ashok Kumar and Others v. Chairman, Banking Service Recruitment Board and Others (AIR 1996 SC 976). In fact, the Court therein took the view that future vacancies in the light of the terms of the Notification would mean vacancies arising after the date of expiry of the list. There is no such provision as far as the University is concerned,

enabling filling up of existing and arising vacancies from the list. If one goes by these decisions, there cannot be any doubt that the appointment of second respondent was patently illegal. But, this position is sought to be overcome by the respondents by relying on the decision of the Apex Court in Prem Singh and Others v. Haryana State Electricity Board and Others ((1996) 4 SCC 319). Reliance was further placed by the respondents on the decision in State of J & K and Others v. Sanjeev Kumar and Others ((2005) 4 SCC 148). That was a case where an advertisement was issued by the State inviting applications for the post of Lecturer in Paediatrics and before the date, four persons had been granted ad hoc promotion which was approved by the PSC. Persons who were not found eligible, questioned their exclusion from interview. The writ petitions were dismissed. Subsequently, a select list was prepared indicating that one Dr. N was placed at No.1. A waiting list was also prepared. The appellants before the Apex Court came to be appointed before the expiry of the validity period under the

Rules. The Division Bench interfered with the appointments being beyond the notified vacancies. It was the reasoning that it was in respect of future vacancies. Relying on Prem Singh's case supra, the Court held that by a policy decision, Government could appoint persons from the waiting list. There, the Court dealt with the effect of Rule 57 of the Recruitment Rules and found that it was not considered by the High Court. The Court held that in Prem Singh's case, it was laid down that while issuing advertisement, Government could have taken into account likely vacancies. Virender S. Hooda and Others v. State of Haryana and Another ((1999) 3 SCC 696) was also relied on by second respondent. Therein, the Haryana Public Service Commission advertised twelve posts in the Executive Branch. On completion of selection, final list was published on 19.6.1992, but the appellants did not find a place in the merit list, against the said posts. They contended that some of the selected candidates did not join and, therefore, the appellants should have been considered against the vacancies which so

arose, depending on their ranking. Circulars were relied on to contend that they provided that for vacancies which arise within six months from the receipt of the recommendation of the Commission should be filled up from the waiting list maintained by the Commission. They also provided that if additional vacancies occur after the Commission has made recommendations, such additional vacancies can also be filled up from amongst candidates recommended by the Commission. It was in such circumstances that the Court directed the appellants' case for appointment to be considered. That was a case where apparently the matter came to be decided on the basis of Circulars which provided for such appointments to be made.

10. I am of the view that the appointment made of second respondent from the select list prepared pursuant to Ext.P3 is palpably illegal and contrary to the law declared by this Court in Kerala Agricultural University v. Gopinathan Unnithan (1996 (1) KLT 344) and the decision of the Apex Court in Ashok

Kumar's case. Even though an attempt was made to salvage the position, pointing out that the post is a teaching post and the academic interest of the students would be jeopardised, besides relying on directions to the academic body referred to by me earlier, I am of the view that in the facts of this case, the said contentions of the respondents must fail. It is to be noted that all that the academic body has directed is that there should be regular appointments made without any delay and that Guest arrangement should be terminated at the earliest. It is to be noted that when Dr. K. N. Harilal took leave without allowance in 2001, a Guest Lecturer was appointed. The Guest Lecturer was apparently continuing till 2007. Even though the case of the respondent University is that it will take six months' time to fill up the post after issuing a fresh notification, if the University could have continued the Guest arrangement for more than five years, I fail to understand how they can plead injury to academic interest if the Guest Lecturer is to continue for another

six months. I am sure that if the University makes a sincere attempt, it can even complete the process of selection in less than six months' time. This is a case where the writ petition was filed without any delay and there can be no difficulty in complying with the requirement of law and making regular appointment to the vacancy. Even though Dr. K. N. Harilal was relieved with effect from 2001, it is to be noted that the vacancy cannot be said to have been existing as on the said and, therefore, existing on the date of Ext.P3. I do not think that this is a case where discretion should be exercised in favour of the second respondent, at the cost of undermining the rule of law and the larger interest in throwing open appointment to all equally circumstanced. This is not a case where the interest of equality before law can be jettisoned at the alter of the alleged academic interest pleaded which plea, as I have already noted, is plainly hollow.

11. As in the case of Rajamohan v. The State of Kerala and Others (1997 (1) ILR 199), nothing turns on the publication of the list for one year. Apparently, it is to fill up the posts as notified that the list is prepared and not to go beyond filling up those two posts. So interpreted, it cannot imperil the petitioners even in the absence of a challenge to the said decision. It is also to be noted that this is a case where the period of one year is not even fixed at the time of issuance of Ext.P1. As held by the Apex Court, prospective candidates do take into consideration number of vacancies as notified in deciding whether to participate in the selection process. I would think in the totality of the facts in this case, I should follow the dictum of the Division Bench of this Court in Kerala Agricultural University v. Gopinathan Unnithan (1996 (1) KLT 344) and the other decisions already referred to by me and veto an attempt on the part of the University to over-reach itself and trample upon the

precious right to equality which I think is available to the petitioners also in the inevitable selection process which interference in this case entails. I do not think that the fact that they have not challenged the select list or the rank list should in any way disable them from questioning an appointment contrary to law. There is no prohibition pointed out against their being considered if a fresh selection is held as per law. It is to be noted that the decision to fix the period of the rank list as one year was not even taken at the time of issuance of Ext.P3. Even assuming that the University which is governed by the Statutes can proceed to take a policy decision, I am unable to accept the decision taken fixing the life of the list as one year, as the policy decision contemplated by the Apex Court. I also am unable to accept the precedents cited in paragraph 7 of the Counter Affidavit of the University as establishing justification for departing from the principle enunciated by this Court following

the decision of the Apex Court. This cannot be characterised as a case where the vacancy caused by Ext.P1 could have said to have created an exceptional circumstance or an emergent situation, particularly having regard to the continuance of Guest Lecturer since the year 2001. In such circumstances, the Writ Petition is allowed and it is declared that the appointment of the second respondent as Lecturer in International Relations is illegal. There will be a further direction to the University to undertake selection to the post in accordance with Statute 3 Chapter III of the Statutes already referred to by me and complete the process of appointment at the earliest.

**K. M. JOSEPH, JUDGE**

kbk.